UAW Testimony on HB 5002 – Worker Compensation
before the Senate Reforms, Restructuring and Reinvention Committee
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by
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Worker compensation in Michigan is the result of a historic trade off where workers gave up their right to sue for work related injuries in exchange for the relative security of worker compensation benefits. Businesses gained immunity from potentially costly court awards in exchange for the predictability of worker compensation insurance costs.

HB 5002 drastically changes that 100 year old compact by making it difficult, if not impossible, for injured workers to receive benefits.

Why is the business community pushing this radical change? It is certainly not because the cost of worker compensation insurance in Michigan. Michigan's worker compensation law was recently hailed as "a competitive asset" for Michigan by the insurance industry backed Worker Compensation Research Institute. A recent study by the Institute stated that Michigan's total costs per claim is 35% lower than the median of 16 states studied. The Department of Licensing and Regulatory Affairs recently announced that the pure premium advisory rates for worker's compensation insurance will drop by an average of 7.4% next year. This is the 12th time in the last 16 years that these rates have been reduced.

In short, HB 5002 is a solution in search of a problem. Let me point out some of the major problems with the legislation;

Imaginary Wages – HB 5002 would allow for the reduction of benefits for imaginary wages that an injured worker doesn't earn at a job he doesn't have. Although some claim they have "fixed" this problem in the H-2 substitute, they have not. Wage earning capacity is still defined on page 11, line 26 as wages "whether or not actually earned." It further states that a magistrate "may" consider "good faith job search efforts to determine whether jobs are reasonably available", but doesn't require that a magistrate do so. On page 12, line 23, it requires an injured worker to "show that he or she cannot obtain **any** of those jobs" within his or her qualifications and training that pay maximum wages, a virtual impossibility. This language, taken in totality, turns the worker comp system on its head, saying that an injured worker is guilty until proven innocent. This section should be amended to reflect the recommendations of the Workers' Compensation Law Section of the State Bar of Michigan, an organization comprised of 851 business and labor lawyers practicing in this area of law. They propose a definition of disability that links benefit reductions to "the weekly wage the employee **actually earns**", not an imaginary wage.

Imaginary Pensions – A similar thing happens to older workers with regard to pensions under HB 5002. Under current law, worker comp benefits are reduced by the amount of a pension that you actually receive. Under HB 5002, your benefits could be reduced by a pension you "are eligible to receive." An auto worker may be eligible to retire under a "30 and out" retirement plan when they are in their late 40's, but they don't want to retire and can't afford to retire. But if that worker gets injured on the job, he or she could see their worker compensation benefit greatly reduced or wiped out altogether to offset a pension that they don't receive. They may have to retire, just to put food on the table. That is a complete perversion of the intent of the workers compensation system, which is supposed to help people get healthy so they can return to work, not force them to retire. In testimony before the House of Representatives, the Michigan Manufacturers Association justified this provision, saying that "An eligible individual that chooses to postpone retirement to avoid a reduction in workers comp benefits should not be in a better financial position than a similarly positioned pensioner.

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That is preposterous. First, the MMA assumes that an injured 48 year old worker is "postponing retirement" They are not. They want to get healthy and back to work. Then they claim that the two workers in question are "similarly positioned." They're not. One is working and the other is retired. Their positions could not be more dissimilar. This section treats older injured workers like they are broken parts in a machine that is ready for the junk pile. That it simply wrong. This provision should be eliminated.

Fault vs. Misconduct – Supporters of HB 5002 say this legislation is needed to codify current case law. However, it seems that their desire to codify case law only extends to those areas of case law with which they agree. Current case law allows for cutting off benefits for injured workers who are fired for misconduct, a serious legal threshold for on inappropriate job behavior. Instead of codifying a Michigan Supreme Court decisions that set this standard (*Daniel v Department of Corrections in 2003)* HB 5002 uses a much lower standard of discharge for "fault" as a reason to discontinue benefits. This could be something as trivial as parking in the wrong parking space, punching in two minutes late or wearing the wrong color shirt. Worker comp is supposed to be a no fault system. Comp is the exclusive remedy for workplace injuries, with no consideration of the fault of the employer or the employee. In section 418.131 of the act, it is specified that an injured worker can not sue an employer for damages unless "an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge." That is an exceptionally tough standard. It is simply not fair to allow workers to be cut off from comp because of a trivial work rule. The new language on page 14, lines 7-8 and on page 43, lines 9 and 10 should be eliminated. At the very least, it should be amended to replace the word "fault" with "misconduct."

Family Doctor – Current law requires an injured worker to see the company doctor for the first 10 days of their injury before they can see the physician that knows them and their medical history best...their family doctor. This bill would extend that time period to 45 days. It is ironic that many of the people who have criticized national health care for supposedly preventing people from being treated by their family doctor would more than quadruple the time period before an injured worker could be treated by their family doctor. The number on page 18, line 14 should be changed from 45 days back to the current 10 days.

Magistrate Qualifications – HB 5002 "dumbs down" the process for selecting members of the Worker's Compensation Board of Magistrates. The first nine pages of the H-2 version of the bill eliminate the authority of the Qualifications Advisory Committee (QAC), a panel of business and labor representatives with experience in the area of worker compensation who administer tests, screen qualified candidates and make recommendation to the Governor for appointments to the Magistrates. It also eliminates the current requirement that Magistrates have 5 years of experience in the field of workers compensation, requiring only 5 years experience as an attorney. These provisions of HB 5002 could lead to a politically appointed Board of Magistrates with little experience in the complicated field of worker compensation law.

In summary, HB 5002 is not a bill that merely codifies case law, updates an old statute or makes technical changes, as supporters claim. It is a cold, calculating effort to radically change Michigan worker compensation law to tilt it in favor of the employer and make it extremely difficult for an injured worker to get the financial support they need until they are healthy and able to return to work.